

To: Bob Perciasepe/DC/USEPA/US@EPA[]
From: "Opper, Richard"
Sent: Tue 1/17/2012 4:27:39 PM
Subject: FW: story for you
Amy Linn

Bob,

Thanks for bring up the great success EPA and Montana had on the nutrients issue during our ECOS call just now. Here's a story written for BNA (I think that's part of Bloomberg's) on the issue. I spent a lot of time explaining things to her, and I think she did a very good job on the story. Again, thanks for giving me a chance to brag about the great cooperation with our federal partner.

Richard

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Environment

EPA Approves Montana's Flexible Approach
To Cutting Nitrogen, Phosphorous in Water

By <~WRD000.jpg>Amy Linn<~WRD000.jpg>

MISSOULA, Mont.—Montana has won its lengthy quest to win federal approval for a flexible approach to reduce nitrogen and phosphorous in water, a plan that allows cities and industries to meet tough new pollution standards incrementally over a 20-year period.

The U.S. Environmental Protection Agency informed the Montana Department of Environmental Quality Jan. 6 that the state's draft criteria for nutrient standards had been accepted. EPA also granted Montana a temporary variance so that it can achieve compliance in stages, rather than all at once.

Imposing the limits immediately, which would require high-cost pollution control upgrades, would be economically disastrous, Montana told EPA.

The agency accepted that argument in wholesale fashion, granting a broad variance—a potential model for other states—that allows municipalities, industries, and other “dischargers” to use the phased-in approach without first getting DEQ approval on a case-by-case basis.

“I think Montana is going to be an example that a lot of other states are going to follow,” DEQ Director Richard Opper told Bloomberg BNA Jan. 12. “The EPA really did show some flexibility here. It was in

everyone's best interests.”

EPA Says Variance Consistent With CWA

“EPA concludes that the issuance of the variances would be consistent with the Clean Water Act and its implementing regulations,” EPA Region 8 Administrator James Martin wrote in a letter to the state agency.

Under an EPA mandate, states must develop hard numbers, or “numeric nutrient criteria,” to limit discharges of nitrogen and phosphorous, natural elements that in excess can create oxygen-choking algal blooms and contribute to widespread pollution and harmful degradation of U.S. waters.

Montana provided EPA with a convincing technical analysis that showed why the variance was necessary, Martin wrote.

A temporary variance process, to be revisited in three years, “is essential to assure effective long-term implementation” of water quality goals, the letter said.

According to DEQ, Montana's proposed nutrient standards, even with the incremental requirements in place, will still bring significant and immediate water quality improvements.

An estimated 70 percent of the state's large nutrient dischargers will require immediate upgrades to reach the variance treatment minimums, DEQ reported.

Approximately 30 percent of smaller dischargers would need immediate upgrades, and two-thirds of facilities with discharge permits would require additional monitoring, according to the state agency.

‘Very Complicated Scientific Process.’

EPA approval comes as a relief to DEQ as well as lawmakers and officials from industries, municipalities, and environmental groups, who had met for two years to develop numeric nutrient standards.

“Developing the standards is a very complicated scientific process, but deciding how to implement them is even more difficult,” Oppen told Bloomberg BNA. “It doesn't matter how good your standards are if you don't implement them,” he said. “And it doesn't do a thing to improve water quality; it just looks good on paper.”

Codifying that argument, the 2011 Montana Legislature passed Senate Bill 367 to amend state law (Section 75-5-103 MCA) and authorize DEQ to use statewide “nutrient standard variances,” pending EPA approval.

Under the variances, lawmakers asserted that dischargers have more time to upgrade the technologies that remove nitrogen and phosphorous from water, a process that today would require wholesale use of costly reverse osmosis treatments.

The upgrades could cost \$40 million for public sector wastewater treatment plants and \$15.8 million to improve drinking water and other sources, at a net public cost of \$24 million annually, according to DEQ's 2010 report to the Montana Environmental Quality Council.

New Rule, Limits Ahead

With EPA approval in hand, the variance will be presented to the state Board of Environmental Review for adoption under the rulemaking process, which could be completed in six months, Oppen said.

Under the new rules, dischargers of more than 1 million gallons of water per day would be required to meet interim effluent values of no more than 1 milligram per liter (mg/L) for total phosphorus and 10 mg/L for total

nitrogen. Those who discharge less than 1 million gallons per day would be limited to 2 mg/L total phosphorus and 15 mg/L total nitrogen.

In three years, DEQ would assess whether cheaper technologies are available and whether the timetable for compliance could be stepped up.

By the 20-year mark, discharge limits would be reduced to between 0.006 and 0.124 mg/L for phosphorus and between 0.130 and 1.358 mg/L for nitrogen.

As more states put stringent controls into place, the demand for new technologies will spark innovations and reduced prices, due to market competition, Montana officials predicted.